

By United States Mail and Email

[REDACTED]

Applicant: [REDACTED]
Request: waiver of application fee
Disposition: dismissed and denied (47 U.S.C. § 159A(d), 47 CFR § 1.1119)
Date Filed: January 20, 2022

Dear [REDACTED]:

This responds to the “Motion in Support of Application to File in Forma Pauperis” and the “Affidavit in Support of Application to File in Forma Pauperis” (collectively, the Request) submitted to the Federal Communications Commission (the Commission) on January 20, 2022.¹ For the reasons stated below, we dismiss the Request as procedurally defective pursuant to section 1.1119 of the Commission’s rules.² Alternatively and independently, we deny the Request on the merits because the Request fails to prove financial hardship, or to otherwise demonstrate good cause for granting the waiver and to demonstrate that a waiver would promote the public interest pursuant to section 9A(d) of the Communications Act of 1934, as amended (Act) and section 1.1119 of the Commission’s regulations.³

BACKGROUND

On January 20, 2022, the Request, together with a “Formal Complaint of [REDACTED] (the Complaint) and a “Demand for Reasonable Accommodations/Guardian Ad Litem Pursuant to the Americans with Disabilities Act” (Demand) were filed by electronic transmission to the Commission’s Consumer Complaint Center (Complaint Center).⁴ The required \$1,620.00 filing fee for the Complaint was not paid.⁵ Instead, the Request, made pursuant to section 1.224 of the Commission’s rules, asks to proceed in forma pauperis.

¹ Formal Complaint of [REDACTED], Ticket No. 5251819 (Consumer and Governmental Affairs Bureau, Jan. 20, 2022) (“Complaint”).

² 47 CFR § 1.1119.

³ 47 U.S.C. § 159a(d); 47 CFR § 1.1119.

⁴ The Commission has not received a hard copy of the submission. The USPS tracking sheet provided to prove delivery of a hard copy of the submission shows that an item was delivered to an unspecified address within zip code 20002. See USPS Tracking Formal Complaint to FCC, Ticket No. 5251819 (Consumer and Governmental Affairs Bureau, Jan. 20, 2022). The Commission’s headquarters are located at 45 L St., NE, Washington DC 20554.

⁵ The fee for filing a formal complaint with the Commission is \$540.00. 47 CFR § 1.1107. Section 1.734(b) of the Commission’s regulations requires the filing party to pay the base fee for each defendant named in a formal complaint. 47 CFR § 1.734(b). The Complaint names three defendants. Thus, the total fee owed is \$1,620.00.

The Request consists principally of your unsworn affidavit (Affidavit) attesting to monthly [REDACTED] payments of [REDACTED] and monthly expenses as follows: [REDACTED] in rent, [REDACTED] for car insurance, and approximately [REDACTED] for wireless services.⁶ The Affidavit states that the [REDACTED] payments are your sole source of income and that you have [REDACTED]. Copies of a [REDACTED] and monthly invoices from [REDACTED] are attached to the Affidavit as evidence of your monthly income and expenses.

DISCUSSION

I. The Request is procedurally deficient and is therefore dismissed pursuant to section 1.1119 of the Commission's regulations.⁷

The Request seeks to proceed in forma pauperis pursuant to Section 1.224 of the Commission's regulations.⁸ This rule, however, is only applicable to licensees in license revocation or renewal proceedings or to intervenors in certain hearing proceedings.⁹ Because the Request does not fall under either of those categories, we treat the Request as a request for waiver of the \$1620.00 filing fee,¹⁰ pursuant to section 1.1119 of the Commission's rules.¹¹

The Commission's Office of Managing Director (OMD) may waive an application fee if the party requesting the waiver has filed the waiver request in accordance with section 1.1119 of the Commission's regulations, and has shown good cause for a waiver and that a waiver would promote the public interest.¹² A waiver request for which the application fee at issue is not paid must be filed electronically through the Commission's Electronic Comment Filing System (ECFS), or with the Commission's Secretary.¹³ A waiver request that is based on financial hardship must be accompanied by a separate request for deferral of the fee, to which documentation supporting the financial hardship claim must be attached.¹⁴ The waiver request and the deferral request must each be clearly addressed to the attention of the Commission's Managing Director.¹⁵ Waiver and deferral requests that do not comply with section 1.1119 of the Commission's regulations will be not be considered and will be dismissed.¹⁶

The Request is procedurally deficient in several respects. Rather than filing the Request through ECFS or with the Commission's Secretary, the Request, along with the Complaint and the Demand, were

⁶ Affidavit, pp. 1-2. You explain that you had not yet received your first bill for wireless services, but offer a [REDACTED] T-Mobile bill on an unnamed account, as support for your estimated monthly expense of [REDACTED].

⁷ 47 CFR § 1.1119.

⁸ 47 CFR § 1.224.

⁹ 47 CFR § 1.224(a)(1).

¹⁰ We understand from conversations you had during the complaint intake process that you are seeking a waiver of the \$1620.00 application fee.

¹¹ Section 1.1119 of the Commission's rules governs waivers of application fees, including the fee required to be paid with the Complaint. 47 CFR § 1.1119(a); 47 CFR § 1.1106..

¹² *Id.* The Commission had delegated the authority to grant application fee waivers requests to OMD. 47 CFR § 0.231(a).

¹³ 47 CFR § 1.1119(c)(2).

¹⁴ 47 CFR § 1.1119(c) and (e).

¹⁵ 47 CFR § 1.1119(c).

¹⁶ 47 CFR § 1.1119(c) and (e).

uploaded to the Complaint Center. A separate request to defer payment of the application fee (to which supporting financial documents should have been appended), as required by section 1.1119 for waiver requests based on claims of financial hardship, was not filed.¹⁷ Finally, copies of the Request were not sent to OMD,¹⁸ nor was the Request addressed to the attention of the Managing Director.¹⁹

Accordingly, we dismiss the Request as procedurally defective under section 1.1119 of the Commission's regulations.

- II. Alternatively and independently, we deny the Request on the merits, because the Request does not prove financial hardship or otherwise demonstrate good cause for granting the Request and does not show that waiver of the application fee would promote the public interest, pursuant to section 9A(d) of the Act and section 1.1119 of the Commission's regulations.²⁰

Section 1.1119 of the Commission's rules, enacting section 9A(d) of the Act, permits waiver of an application fee upon a showing of good cause and that a waiver would promote the public interest.²¹ The Commission narrowly interprets this standard to permit only those waivers "unambiguously articulating 'extraordinary circumstances' outweighing the public interest in recouping" the Commission's cost of providing the required services.²² The Commission recognizes that financial hardship may justify waiving an application fee but only if the circumstances are "extraordinary and conclusively proven through full and complete documentation provided by the requesting party."²³ The burden of proof for establishing financial hardship lies solely with the party seeking waiver relief.²⁴ To that end, the Commission periodically publishes a list of documents that may be helpful in demonstrating financial hardship.²⁵ The list is not intended to be exhaustive, but instructive, and demonstrates that financial hardship for waiver purposes is determined not just by a requesting party's immediate financial circumstances, but by the requestor's financial history leading up to the filing and the requestor's financial projections for the immediate future.²⁶ Ultimately, the requesting party has

¹⁷ *Id.* The Request consists of a motion to proceed in forma pauperis and a separate, supporting affidavit to which financial documentation is attached. Neither pleading is a request for deferral under the rule.

¹⁸ 47 CFR § 1.1119(e).

¹⁹ 47 CFR § 1.1119(c).

²⁰ 47 U.S.C. § 159A(d); 47 CFR § 1.1119(a).

²¹ *Id.*

²² In 2020, the Commission restated and explained its longstanding precedent regarding application fee waivers. *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*; Notice of Proposed Rulemaking, 36 FCC Rcd 1618, 1682-1683, para. 239 (2020) (*FY 2020 Application Fee NPRM*), quoting *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 8189, 8207, para. 50 (2019) (*FY 2019 Regulatory Fee Report and Order*).

²³ *FY 2020 Application Fee NPRM*, 36 FCC Rcd 1618, 1682-1683, para. 239.

²⁴ *Id.*

²⁵ See, e.g., *FY 2019 Regulatory Fee Report and Order*, 34 FCC Rcd 8207, para. 50.

²⁶ For example the Commission list includes an annual balance sheet and a profit and loss statement, which provides information about the requesting party's financial and business operations for the twelve month period preceding the waiver request, and twelve months of projected cash flows, which, among other things, help in determining whether the requesting party's financial difficulties are temporary or continuing.

sole responsibility for determining and submitting all documents the requesting party believes are necessary to prove financial hardship.²⁷

The instant Request provides a very narrow and incomplete picture of your financial circumstances. Rather than proving financial hardship, the Request raises additional questions. For instance, the Affidavit states that your sole source of income is [REDACTED] per month and that you [REDACTED]. The Affidavit identifies you as the [REDACTED].²⁸ The Affidavit refers to a checking account but does not provide statements for that account or for any other personal or business accounts, including credit or debit card accounts, that you may have.²⁹ In short, the documentation provided is insufficient to prove financial hardship.

We also reviewed the Complaint and found that the information provided suggests that you have income, over and above the [REDACTED] you receive, that you may operate other income-producing businesses, and consequently, that you may have sufficient funds to pay the application fee.³⁰ For example, in paragraph 21 of the Complaint, you state that you [REDACTED]

[REDACTED]³² The Complaint exhibit [REDACTED] described as your business plan, consists of financial and other information submitted to [REDACTED] on January 7, 2022 [REDACTED]. According to the income statements provided to [REDACTED], you earne [REDACTED]

[REDACTED]³³ No other earnings information was included in the [REDACTED], but the [REDACTED] submission does include a Dun & Bradstreet statement dated January 7, 2022 which states that [REDACTED].³⁴

In short, financial hardship to justify waiver of the application fee has not been proven. Further, the Request does not assert or provide proof of any other good cause basis for granting the Request and does not demonstrate that granting the Request would promote the public interest.³⁵ Accordingly, the Request is denied on the merits pursuant to section 9A(d) of the Act and section 1.1119 of the Commission's regulations.³⁶

²⁷ *FY 2019 Regulatory Fee Report and Order*, 34 FCC Rcd 8207, para. 50.

²⁸ Affidavit, pps. 1-2.

²⁹ Affidavit, pps. 1-2.

³⁰ The Commission may, but is not required to, review other Commission records to determine whether a fee waiver is justified. *See FY 2019 Regulatory Fee Report and Order*, 34 FCC Rcd at 8208, para. 53 (in which the Commission held that it has no obligation to consult Commission records for information pertinent to a waiver request, and that the party requesting waiver relief must submit all documents necessary to prove financial hardship, regardless of whether such documents or information exists in Commission records).

³¹ Complaint, p. 18, para 21.

³² [REDACTED]

³³ [REDACTED] Exhibit, pps.15-16.

³⁴ [REDACTED] Exhibit, p. 5.

³⁵ In particular, the Request does not show how being permitted to proceed with the Complaint without payment of the required \$1620.00 application fee would promote the public interest.

³⁶ 47 U.S.C. § 159A(d); 47 CFR § 1.1119.

Please send any questions you have concerning this decision to waiverdecisioninquiries@fcc.gov.

Sincerely,

OFFICE OF MANAGING DIRECTOR

FEDERAL COMMUNICATIONS COMMISSION